



## Senate

General Assembly

**File No. 473**

*January Session, 2017*

Substitute Senate Bill No. 901

*Senate, April 6, 2017*

The Committee on Public Health reported through SEN. GERRATANA of the 6th Dist. and SEN. SOMERS of the 18th Dist., Chairpersons of the Committee on the part of the Senate, that the substitute bill ought to pass.

***AN ACT CONCERNING THE DEPARTMENT OF PUBLIC HEALTH'S  
RECOMMENDATION REGARDING ADOPTION OF A MODEL FOOD  
CODE.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subsection (a) of section 19a-36 of the general statutes is  
2 repealed and the following is substituted in lieu thereof (*Effective*  
3 *October 1, 2017*):

4 (a) The Commissioner of Public Health shall establish a Public  
5 Health Code and, from time to time, amend the same. The Public  
6 Health Code may provide for the preservation and improvement of  
7 the public health.

8 [(1) Said code may include regulations pertaining to retail food  
9 establishments, including, but not limited to, food service  
10 establishments, catering food service establishments and itinerant food  
11 vending establishments and the required permitting from local health

12 departments or districts to operate such establishments.]

13 [(2)] (1) Drainage and toilet systems to be installed in any house or  
14 building arranged or designed for human habitation, or field  
15 sanitation provided for agricultural workers or migratory farm  
16 laborers, shall conform to minimum requirements prescribed in said  
17 code.

18 [(3)] (2) Said code may include regulations requiring toilets and  
19 handwashing facilities in large stores, as defined in such regulations,  
20 in shopping centers and in places dispensing food or drink for  
21 consumption on the premises, for the use of patrons of such  
22 establishments, except that the provisions of such regulations shall not  
23 apply to such establishments constructed or altered pursuant to plans  
24 and specifications approved or building permits issued prior to  
25 October 1, 1977.

26 [(4)] The provisions of such regulations (A) with respect to the  
27 requirement of employing a qualified food operator and any reporting  
28 requirements relative to such operator, shall not apply to an owner or  
29 operator of a soup kitchen who relies exclusively on services provided  
30 by volunteers, and (B) shall not prohibit the sale or distribution of food  
31 at a noncommercial function such as an educational, religious, political  
32 or charitable organization's bake sale or potluck supper provided the  
33 seller or person distributing such food maintains such food under the  
34 temperature, pH level and water activity level conditions that will  
35 inhibit the rapid and progressive growth of infectious or toxigenic  
36 microorganisms. For the purposes of this section, a "noncommercial  
37 function" means a function where food is sold or distributed by a  
38 person not regularly engaged in the for profit business of selling such  
39 food.

40 (5) The provisions of such regulations with respect to qualified food  
41 operators shall require that the contents of the test administered to  
42 qualified food operators include elements testing the qualified food  
43 operator's knowledge of food allergies.]

44     [(6)] (3) Each regulation adopted by the Commissioner of Public  
45     Health shall state the date on which it shall take effect, and a copy of  
46     the regulation, signed by the Commissioner of Public Health, shall be  
47     filed in the office of the Secretary of the State and a copy sent by said  
48     commissioner to each director of health, and such regulation shall be  
49     published in such manner as the Commissioner of Public Health may  
50     determine.

51     [(7)] (4) Any person who violates any provision of the Public Health  
52     Code shall be guilty of a class C misdemeanor.

53     Sec. 2. (NEW) (*Effective October 1, 2017*) (a) As used in this section  
54     and sections 3 to 8, inclusive, of this act:

55     (1) "Catering food service establishment" means a business that is  
56     involved in the (A) sale or distribution of food and drink prepared in  
57     bulk in one geographic location for retail service in individual portions  
58     in another location, or (B) preparation and service of food in a public  
59     or private venue that is not under the ownership or control of the  
60     operator of such business;

61     (2) "Certified food protection manager" means a food employee that  
62     has supervisory and management responsibility and the authority to  
63     direct and control food preparation and service;

64     (3) "Class 1 food establishment" means a food establishment that  
65     only offers for retail sale (A) prepackaged food that is not time and  
66     temperature controlled for safety, (B) commercially processed food  
67     that (i) is time and temperature controlled for safety and heated for hot  
68     holding, but (ii) is not permitted to be cooled, or (C) food prepared in  
69     the establishment that is not time and temperature controlled for  
70     safety;

71     (4) "Class 2 food establishment" means a retail food establishment  
72     that does not serve a population that is highly susceptible to food-  
73     borne illnesses and offers a limited menu of food that is prepared,  
74     cooked and served immediately, or that prepares and cooks food that

75 is time and temperature controlled for safety and may require hot or  
76 cold holding, but that does not involve cooling;

77 (5) "Class 3 food establishment" means a retail food establishment  
78 that has an extensive menu of foods, many of which are time and  
79 temperature controlled for safety and require complex preparation,  
80 including, but not limited to, handling of raw ingredients, cooking,  
81 cooling and reheating for hot holding;

82 (6) "Class 4 food establishment" means a retail food establishment  
83 that serves a population that is highly susceptible to food-borne  
84 illnesses, including, but not limited to, preschool students, hospital  
85 patients and nursing home patients or residents, or that conducts  
86 specialized food processes, including, but not limited to, smoking,  
87 curing or reduced oxygen packaging for the purposes of extending the  
88 shelf life of the food;

89 (7) "Cold holding" means maintained at a temperature of forty-one  
90 degrees Fahrenheit or below;

91 (8) "Commissioner" means the Commissioner of Public Health or  
92 the commissioner's designee;

93 (9) "Contact hour" means a minimum of fifty minutes of a training  
94 activity;

95 (10) "Department" means the Department of Public Health;

96 (11) "Director of health" means the director of a local health  
97 department or district health department appointed pursuant to  
98 section 19a-200 or 19a-242 of the general statutes;

99 (12) "Food code" means the food code administered under section 3  
100 of this act;

101 (13) "Food establishment" means an operation that (A) stores,  
102 prepares, packages, serves, vends directly to the consumer or  
103 otherwise provides food for human consumption, including, but not

104 limited to, a restaurant, catering food service establishment, food  
105 service establishment, temporary food service establishment, itinerant  
106 food vending establishment, market, conveyance used to transport  
107 people, institution or food bank, or (B) relinquishes possession of food  
108 to a consumer directly, or indirectly through a delivery service,  
109 including, but not limited to, home delivery of grocery orders or  
110 restaurant takeout orders or a delivery service that is provided by  
111 common carriers. "Food establishment" does not include a vending  
112 machine, as defined in section 21a-34 of the general statutes, a private  
113 residential dwelling in which food is prepared under section 21a-62a of  
114 the general statutes or a food manufacturing establishment, as defined  
115 in section 21a-151 of the general statutes;

116 (14) "Food inspector" means a director of health, or his or her  
117 authorized agent, or a registered sanitarian who has been certified as a  
118 food inspector by the commissioner;

119 (15) "Food inspection training officer" means a certified food  
120 inspector who has received training developed or approved by the  
121 commissioner and been authorized by the commissioner to train  
122 candidates for food inspector certification;

123 (16) "Food-borne illness" means illness, including, but not limited to,  
124 illness due to heavy metal intoxications, staphylococcal food  
125 poisoning, botulism, salmonellosis, shigellosis, *Clostridium*  
126 *perfringens* intoxication and hepatitis A, acquired through the  
127 ingestion of a common-source food or water contaminated with a  
128 chemical, infectious agent or the toxic products of a chemical or  
129 infectious agent;

130 (17) "Food-borne outbreak" means illness, including, but not limited  
131 to, illness due to heavy metal intoxications, staphylococcal food  
132 poisoning, botulism, salmonellosis, shigellosis, *Clostridium*  
133 *perfringens* intoxication and hepatitis A, in two or more individuals,  
134 acquired through the ingestion of common-source food or water  
135 contaminated with a chemical, infectious agent or the toxic products of  
136 a chemical or infectious agent;

137 (18) "Hot holding" means maintained at a temperature of one  
138 hundred thirty-five degrees Fahrenheit or above;

139 (19) "Itinerant food vending establishment" means a vehicle-  
140 mounted, self-contained, mobile food establishment;

141 (20) "Permit" means a written document issued by a director of  
142 health that authorizes a person to operate a food establishment;

143 (21) "Temporary food service establishment" means a food  
144 establishment that operates for a period of not more than fourteen  
145 consecutive days in conjunction with a single event or celebration;

146 (22) "Time or temperature controlled for safety" means maintained  
147 at a certain temperature or maintained for a certain length of time, or  
148 both, to prevent microbial growth and toxin production; and

149 (23) "Variance" means a written document issued by the  
150 commissioner that authorizes a modification or waiver of one or more  
151 requirements of the food code.

152 Sec. 3. (NEW) (*Effective October 1, 2017*) (a) The commissioner shall  
153 adopt and administer by reference the United States Food and Drug  
154 Administration's Food Code, as amended from time to time, as the  
155 state's food code for the purpose of regulating food establishments.

156 (b) The commissioner may adopt regulations, in accordance with  
157 the provisions of chapter 54 of the general statutes, to implement the  
158 provisions of this section and sections 4 to 8, inclusive, of this act.

159 Sec. 4. (NEW) (*Effective October 1, 2017*) (a) No person, firm or  
160 corporation shall operate or maintain any food establishment where  
161 food or beverages are served or sold to the public in any town, city or  
162 borough without obtaining a valid permit or license to operate from  
163 the director of health of such town, city or borough, in a form and  
164 manner prescribed by the director of health. The director of health  
165 shall issue a permit or license to operate a food establishment upon  
166 receipt of an application if the food establishment meets the

167 requirements of this section. All food establishments shall comply with  
168 the food code.

169 (b) All food establishments shall be inspected by a certified food  
170 inspector in a form and manner prescribed by the commissioner. The  
171 Commissioner of Public Health may, in consultation with the  
172 Commissioner of Consumer Protection, grant a variance for the  
173 requirements of the food code if the Commissioner of Public Health  
174 determines that such variance would not result in a health hazard or  
175 nuisance.

176 (c) No permit to operate a food establishment shall be issued by a  
177 director of health unless the applicant has provided the director of  
178 health with proof of registration with the department and a written  
179 application for a permit in a form and manner prescribed by the  
180 department. Temporary food establishments and certified farmers'  
181 markets, as defined in section 22-6r of the general statutes, as amended  
182 by this act, shall be exempt from registering with the Department of  
183 Public Health.

184 (d) Each class 2 food establishment, class 3 food establishment and  
185 class 4 food establishment shall employ a certified food protection  
186 manager. No person shall serve as a certified food protection manager  
187 unless such person has satisfactorily passed a test as part of a food  
188 protection manager certification program that is evaluated and  
189 approved by an accrediting agency recognized by the Conference for  
190 Food Protection as conforming to its standards for accreditation of  
191 food protection manager certification programs. A certified food  
192 inspector shall verify that the food protection manager has been  
193 certified upon inspection of the food establishment.

194 Sec. 5. (NEW) (*Effective October 1, 2017*) (a) No person shall engage  
195 in the practice of a food inspector unless such person has obtained a  
196 certification from the commissioner in accordance with the provisions  
197 of this section. The commissioner shall develop a training and  
198 verification program for food inspector certification that shall be  
199 administered by the food inspection training officer at a local health

200 department.

201 (1) Each person seeking certification as a food inspector shall submit  
202 an application to the department on a form prescribed by the  
203 commissioner and present to the department satisfactory evidence that  
204 such person (A) is sponsored by the director of health in the  
205 jurisdiction in which the applicant is employed to conduct food  
206 inspections, (B) possesses a bachelor's degree or three years of  
207 experience in a regulatory food protection program, (C) has  
208 successfully completed a training and verification program, (D) has  
209 successfully completed the field standardization inspection prescribed  
210 by the commissioner, and (E) is not involved in the ownership or  
211 management of a food establishment located in the applicant's  
212 jurisdiction.

213 (2) Each director of health sponsoring an applicant for certification  
214 as a food inspector shall submit to the commissioner a form  
215 documenting the applicant's qualifications and successful completion  
216 of the requirements described in subdivision (1) of this subsection.

217 (3) Certifications issued under this section shall be subject to  
218 renewal once every three years. A food inspector applying for renewal  
219 of his or her certification shall demonstrate successful completion of  
220 twenty contact hours in food protection training, as approved by the  
221 commissioner, and reassessment by the food inspection training  
222 officer.

223 (b) A certified food inspector shall conduct an inspection of a food  
224 establishment in a form and manner prescribed by the commissioner  
225 to determine compliance with the food code. The director of health  
226 shall ensure all food establishments are inspected at a frequency  
227 determined by their risk classification. Such director of health shall  
228 evaluate the food establishment's risk classification on an annual basis  
229 to determine accuracy. More frequent inspections may be conducted to  
230 ensure compliance with the food code. Each food establishment  
231 classification shall be inspected pursuant to the following schedule:



232 (1) Class 1 food establishments shall be inspected at intervals not to  
233 exceed three hundred sixty days.

234 (2) Class 2 food establishments shall be inspected at intervals not to  
235 exceed one hundred eighty days.

236 (3) Class 3 food establishments shall be inspected at intervals not to  
237 exceed one hundred twenty days.

238 (4) Class 4 food establishments shall be inspected at intervals not to  
239 exceed ninety days.

240 (5) Temporary food service establishments shall be inspected prior  
241 to the issuance of a permit to operate and as often as necessary to  
242 ensure compliance with the food code.

243 Sec. 6. (NEW) (*Effective October 1, 2017*) If a director of health has  
244 reasonable cause to suspect the possibility of a food-borne illness or  
245 food-borne outbreak, such director shall complete an investigation and  
246 take action to control the illness or outbreak. Such action may include,  
247 but shall not be limited to, securing employee morbidity histories,  
248 requiring medical and laboratory examinations of an employee,  
249 modification of a menu and any other restriction or action deemed  
250 necessary by such director of health to control the illness or outbreak.  
251 A person who violates any provision of sections 3 to 8, inclusive, of  
252 this act, section 22-6r of the general statutes, as amended by this act, or  
253 section 22-6s of the general statutes, as amended by this act, or who  
254 provides false information during an investigation, refuses to  
255 cooperate with an investigation or otherwise impedes an investigation  
256 that is conducted under this section or section 4 or 5 of this act shall be  
257 guilty of a class C misdemeanor.

258 Sec. 7. (NEW) (*Effective October 1, 2017*) The owner or operator of a  
259 food establishment may appeal to the director of health an order  
260 issued by such director to correct inspection violations identified by  
261 the food inspector or to hold, destroy or dispose of unsafe food, not  
262 later than forty-eight hours after issuance of such order. The director of

263 health shall review the request for an appeal and, upon conclusion of  
264 the review, may vacate, modify or affirm such order. If affirmed by the  
265 director of health, the corrective actions specified by the food inspector  
266 shall be so ordered by the director of health. An owner or operator of a  
267 food service establishment who is aggrieved by the affirmation or  
268 modification of an order by the director of health, including, but not  
269 limited to, an order to suspend the permit or license to operate the  
270 food service establishment, may appeal to the department pursuant to  
271 section 19a-229 of the general statutes. During such appeal, the order  
272 shall remain in effect unless the commissioner orders otherwise.

273       Sec. 8. (NEW) (*Effective October 1, 2017*) (a) Nothing in this section or  
274 sections 3 to 7, inclusive, of this act shall limit the authority of directors  
275 of health under chapter 368e or 368f of the general statutes.

276       (b) For purposes of this section and sections 3 to 7, inclusive, of this  
277 act, the provisions of the general statutes and regulations of  
278 Connecticut state agencies pertaining to certified farmers' markets  
279 shall not limit the authority of the Commissioner of Agriculture and  
280 the director of health to require a farmer to comply with the  
281 requirements of sections 22-6r and 22-6s of the general statutes, as  
282 amended by this act.

283       (c) The provisions of the food code that concern the employment of  
284 a certified food manager and any reporting requirements relative to  
285 such certified food manager (1) shall not apply to (A) an owner or  
286 operator of a soup kitchen that relies exclusively on services provided  
287 by volunteers, (B) any volunteer who serves meals from a nonprofit  
288 organization, including a temporary food service establishment and a  
289 special event sponsored by a nonprofit civic organization, including,  
290 but not limited to, school sporting events, little league food booths,  
291 church suppers and fairs, or (C) any person who serves meals to  
292 individuals at a registered congregate meal site funded under Title III  
293 of the Older Americans Act of 1965, as amended from time to time,  
294 that were prepared under the supervision of a certified food manager,  
295 and (2) shall not prohibit the sale or distribution of food at (A) a bed

296 and breakfast establishment that prepares and offers food to guests,  
297 provided the operation is owner-occupied and the total building  
298 occupant load is not more than sixteen persons, including the owner  
299 and occupants, has no provisions for cooking or warming food in the  
300 guest rooms, breakfast is the only meal offered and the consumer of  
301 such operation is informed by statements contained in published  
302 advertisements, mailed brochures and placards posted in the  
303 registration area that the food is prepared in a kitchen that is not  
304 regulated and inspected by the local health director, and (B) a  
305 noncommercial function, including, but not limited to, an educational,  
306 religious, political or charitable organization's bake sale or potluck  
307 supper, provided the seller or person distributing the food maintains  
308 the food at the temperature, pH level and water activity level  
309 conditions that will inhibit the growth of infectious or toxigenic  
310 microorganisms. For the purposes of this subsection, "noncommercial  
311 function" means a function where food is sold or distributed by a  
312 person not regularly engaged in the business of selling such food for  
313 profit.

314 Sec. 9. Subsection (d) of section 22-6r of the general statutes is  
315 repealed and the following is substituted in lieu thereof (*Effective*  
316 *October 1, 2017*):

317 (d) A food [service] establishment, as defined in section [19-13-B42  
318 of the regulations of Connecticut state agencies] 2 of this act, may  
319 purchase farm products that have been produced and are sold in  
320 conformance with the applicable regulations of Connecticut state  
321 agencies at a farmers' market, provided such establishment requests  
322 and obtains an invoice from the farmer or person selling farm  
323 products. The farmer or person selling farm products shall provide to  
324 the food service establishment an invoice that indicates the source and  
325 date of purchase of the farm products at the time of the sale.

326 Sec. 10. Section 22-6s of the general statutes is repealed and the  
327 following is substituted in lieu thereof (*Effective October 1, 2017*):

328 (a) For purposes of this section: (1) "Certified farmers' market" has

329 the same meaning as provided in section 22-6r, as amended by this act,  
330 and (2) ["food service establishment"] "food establishment" has the  
331 same meaning as provided in section [19-13-B42 of the regulations of  
332 Connecticut state agencies] 2 of this act.

333 (b) Any permit or license to operate a food [service] establishment  
334 that is issued by a municipal health department or health district to a  
335 farmer for the purpose of such farmer's participation in a certified  
336 farmers' market within the jurisdiction of such municipal health  
337 department or health district shall be valid for the purpose of  
338 operating a food [service] establishment at any certified farmers'  
339 market in the state, provided (1) such operation is in accordance with  
340 the menu items and food preparation processes approved by such  
341 issuing municipal health department or health district, or (2) such  
342 operation utilizes menu items or food preparation processes that are  
343 substantially similar to the menu items and food preparation processes  
344 approved by such issuing municipal health department or health  
345 district. Not later than fourteen days prior to commencing the  
346 operation of a food [service] establishment in a municipality that is  
347 within the jurisdiction of a municipal health department or health  
348 district that did not issue a permit or license to such farmer, a notice of  
349 intent to commence such operation shall be sent by such farmer to the  
350 municipal health department or health district with such jurisdiction.  
351 Such notice shall contain a copy of the municipal health department or  
352 health district permit or license issued in accordance with this section  
353 and a copy of any food service plan developed as part of the  
354 application for such permit or license. Any permit or license issued in  
355 accordance with the provisions of this section shall be valid for the  
356 duration of the calendar year in which such permit or license was  
357 issued.

358 (c) Any local director of health may take any regulatory action such  
359 director deems necessary against any farmer who operates a food  
360 [service] establishment within the jurisdiction of such health  
361 department or district, as applicable, in order to ensure that such  
362 farmer is in compliance with the Public Health Code, provided no local

363 director of health shall require any farmer to apply for or purchase a  
364 permit or license to operate a food [service] establishment if such  
365 farmer holds a valid permit or license issued by another municipal  
366 health department or health district and is in compliance with the  
367 provisions of subsection (b) of this section.

368 (d) Any farmer who operates a food [service] establishment in a  
369 certified farmers' market in accordance with this section and the menu  
370 items and food preparation processes approved by the municipal  
371 health department or health district that issued such permit or license,  
372 or who utilizes menu items or food preparation processes that are  
373 substantially similar to the menu items and food preparation processes  
374 approved by such issuing municipal health department or health  
375 district, shall be exempt from the provisions of any ordinance of any  
376 municipality or health district concerning the operation of a food  
377 [service] establishment. No municipal health department or health  
378 district shall require any farmer who applies for a permit or license to  
379 operate a food [service] establishment at a certified farmers' market to  
380 submit information regarding such farmer's ability to comply with any  
381 ordinance of any municipality or health district concerning the  
382 operation of such food [service] establishment.

383 Sec. 11. Subsection (a) of section 19a-36f of the general statutes is  
384 repealed and the following is substituted in lieu thereof (*Effective*  
385 *October 1, 2017*):

386 (a) No person shall use or require the use of disposable, nonsterile  
387 or sterile natural rubber latex gloves at a retail food establishment,  
388 including, but not limited to, a food [service] establishment, catering  
389 food service establishment or itinerant food vending establishment.

390 Sec. 12. Subdivision (2) of subsection (a) of section 38a-313b of the  
391 general statutes is repealed and the following is substituted in lieu  
392 thereof (*Effective October 1, 2017*):

393 (2) The provisions of subdivision (1) of this subsection shall apply to  
394 an insurance policy or rider delivered, issued for delivery, renewed,

395 amended or continued in this state for a food establishment classified  
396 as a class [III or class IV] 3 or class 4 food establishment pursuant to  
397 regulations adopted under section [19a-36] 3 of this act.

398 Sec. 13. Subsections (a) and (b) of section 52-557l of the general  
399 statutes are repealed and the following is substituted in lieu thereof  
400 (*Effective October 1, 2017*):

401 (a) Notwithstanding any provision of the general statutes, any  
402 person, including but not limited to a seller, farmer, processor,  
403 distributor, wholesaler or retailer of food, who donates an item of food  
404 for use or distribution by a nonprofit organization, [or] nonprofit  
405 corporation, political subdivision of the state or senior center and any  
406 nonprofit organization or nonprofit corporation that collects donated  
407 food and distributes such food to other nonprofit organizations or  
408 nonprofit corporations or a political subdivision of the state or senior  
409 center free of charge or for a nominal fee shall not be liable for civil  
410 damages or criminal penalties resulting from the nature, age, condition  
411 or packaging of the food, unless it is established that the donor, at the  
412 time of making the donation, or the nonprofit organization or  
413 nonprofit corporation, at the time of distributing the food, knew or had  
414 reasonable grounds to believe that the food was (1) adulterated, as  
415 defined in section 21a-101, or (2) not fit for human consumption.

416 (b) Notwithstanding any provision of the general statutes, any food  
417 establishment classified as a class [III or class IV] 3 or class 4 food  
418 establishment pursuant to regulations adopted under section [19a-36] 3  
419 of this act, that donates perishable food for use or distribution by a  
420 temporary emergency shelter in accordance with the provisions set  
421 forth in section 38a-313b, as amended by this act, shall not be liable for  
422 civil damages or criminal penalties resulting from the nature, age,  
423 condition or packaging of the food, unless it is established that the  
424 donor, at the time of making the donation, knew or had reasonable  
425 grounds to believe that the food was (1) embargoed or ordered  
426 destroyed by the Department of Public Health or a local director of  
427 health, or an authorized agent thereof, (2) adulterated, as defined in

428 section 21a-101, or (3) not fit for human consumption.

429 Sec. 14. Sections 19a-36c, 19a-36d and 19a-36e of the general statutes  
430 are repealed. (*Effective October 1, 2017*)

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2017</i>	19a-36(a)
Sec. 2	<i>October 1, 2017</i>	New section
Sec. 3	<i>October 1, 2017</i>	New section
Sec. 4	<i>October 1, 2017</i>	New section
Sec. 5	<i>October 1, 2017</i>	New section
Sec. 6	<i>October 1, 2017</i>	New section
Sec. 7	<i>October 1, 2017</i>	New section
Sec. 8	<i>October 1, 2017</i>	New section
Sec. 9	<i>October 1, 2017</i>	22-6r(d)
Sec. 10	<i>October 1, 2017</i>	22-6s
Sec. 11	<i>October 1, 2017</i>	19a-36f(a)
Sec. 12	<i>October 1, 2017</i>	38a-313b(a)(2)
Sec. 13	<i>October 1, 2017</i>	52-557l(a) and (b)
Sec. 14	<i>October 1, 2017</i>	Repealer section

***Statement of Legislative Commissioners:***

In Section 4, "or license" was inserted before "to operate from the director" for consistency with other provisions of the section.

***PH***      *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

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***OFA Fiscal Note******State Impact:*** None***Municipal Impact:*** None***Explanation***

This bill adopts the U.S. Food and Drug Administration Model Food Code, codifying current practice, and does not result in a fiscal impact to the state or municipalities.

***The Out Years******State Impact:*** None***Municipal Impact:*** None



**OLR Bill Analysis****sSB 901*****AN ACT CONCERNING THE DEPARTMENT OF PUBLIC HEALTH'S RECOMMENDATION REGARDING ADOPTION OF A MODEL FOOD CODE.*****SUMMARY**

This bill requires the Department of Public Health (DPH) to adopt and administer the federal Food and Drug Administration's (FDA) Food Code as the state's food code for regulating food establishments and authorizes the DPH commissioner to adopt implementing regulations. Under current law, DPH regulates these establishments under the Public Health Code.

As under current DPH regulations, the bill requires food establishments to obtain a municipal or district health department permit or license to operate. Generally, it establishes similar procedures and requirements as existing DPH regulations in such areas as food inspector certification and food establishment inspections.

Additionally, the bill:

1. modifies the definitions of the four classifications of food establishments;
2. lowers, from 45 degrees to 41 degrees Fahrenheit, the minimum temperature threshold for cold holding potentially hazardous foods;
3. lowers, from 140 degrees to 135 degrees Fahrenheit, the minimum temperature threshold for hot holding potentially hazardous foods;

4. increases, from 16 contact hours to 20 contact hours, the required training hours food inspectors must complete every three years to renew their certifications;
5. requires Class 3 and Class 4 food establishments to employ a “certified food protection manager” instead of a “qualified food operator” and extends the requirement to Class 2 food establishments;
6. requires a local health director to investigate and take specified actions to control a suspected food borne illness or outbreak;
7. allows a food establishment’s owner or operator to appeal a local health director’s order to (a) correct inspection violations or (b) hold, destroy, or dispose of unsafe food within 48 hours after the order was issued; and
8. makes a person who violates the bill’s provisions, provides false information during an investigation, or otherwise impedes an investigation guilty of a class C misdemeanor.

The bill also exempts, from liability for civil damages or criminal penalties resulting from the food’s nature, age, condition, or packaging, persons who donate food or nonprofit organizations that distribute donated food to (1) political subdivisions of the state or (2) senior centers. The immunity does not apply if the person or organization, when making the donation, knew or had reasonable grounds to believe that the food was adulterated or not fit for human consumption.

Finally, the bill makes various technical and conforming changes.

EFFECTIVE DATE: October 1, 2017

## **FDA FOOD CODE**

### ***Permit or License Required***

Under the bill and current DPH regulations, food establishments must generally obtain a permit or license from a municipal or district

health department to operate. The bill requires most establishments to register with DPH before obtaining the permit or license.

The bill exempts from the registration requirement temporary food establishments and farmers' markets. Currently, DPH regulations require temporary food establishments to obtain a permit for up to 14 days if required by local ordinance. By law, farmers' markets may use one municipal permit at any location in the state.

The bill specifies that its provisions do not limit the authority of the agriculture commissioner or local health director to require farmers to comply with farmers' market laws.

### ***Classification and Inspection of Food Establishments***

The bill retains the four classifications of food establishments in current DPH regulations, but modifies their definitions as shown in Table 1. As under current regulations, the bill requires local health directors to annually review a food establishment's classification.

**Table 1: Food Establishment Classifications**

<b><i>Classification</i></b>	<b><i>Under the Bill</i></b>	<b><i>Under Current DPH Regulations (Conn. Agencies Regs., § 19-13-B22(s)(3))</i></b>
Class 1 establishment	food establishment that only offers for retail sale (1) prepackaged food or food prepared in the establishment that is not time and temperature controlled for safety or (2) commercially processed food that is time and temperature controlled for safety, heated for hot holding, but not permitted to be cooled	food establishment with commercially prepackaged foods and hot or cold beverages; does not include preparation, cooking, or hot holding of potentially hazardous foods, except that commercially packaged pre-cooked foods may be heated and served in the original package within four hours
Class 2 establishment	retail food establishment that does not serve a population highly susceptible to food borne illness and offers a limited food menu that is (1) prepared, cooked, and served	food establishment using cold or ready-to-eat commercially processed food needing no further heat treatment or hot and cold beverages, does not include cooking, heating, or

	immediately or (2) prepared, cooked, and time and temperature controlled for safety and may require hot or cold holding, but not cooling	hot holding of potentially hazardous foods, except that commercially packaged pre-cooked foods may be heated and served in the original package within four hours
Class 3 establishment	retail food establishment with an extensive food menu, many items of which are time and temperature controlled for safety and require complex preparation (e.g., cooking, cooling, handling and reheating for hot holding or raw ingredients)	food establishment that prepares potentially hazardous food and serves it within four hours of cooking it
Class 4 establishment	retail food establishment (1) serving a population highly susceptible to food borne illnesses (e.g., preschool students or hospital or nursing home patients) or (2) conducting specialized food processes (e.g., smoking or curing)	food establishment that prepares potentially hazardous food and may hold it for more than four hours before serving it

Under the bill and current DPH regulations, food establishments must be inspected as follows:

1. for Class 1 establishments, at least once every 360 days;
2. for Class 2 establishments, at least once every 180 days;
3. for Class 3 establishments, at least once every 120 days; and
4. for Class 4 establishments, at least once every 90 days.

The bill requires temporary food establishments to be inspected before a permit is issued and as often as necessary to ensure their compliance with the FDA Food Code.

Current DPH regulations require inspection forms to be scored based on point values assigned for all compliance requirements. The

FDA Food Code instead requires inspection forms to list the number of “priority,” “priority foundation,” and “core” violations identified during the inspection (see BACKGROUND).

### ***Certified Food Protection Managers***

Current DPH regulations require anyone who owns, operates, or manages a Class 3 or Class 4 food service establishment to be a qualified food operator or employ one on-site in a supervisory position at the establishment. The qualified food operator must be trained by a DPH-approved testing organization, pass an exam, and ensure that food preparation personnel are trained in food safety.

The bill instead requires Class 3 and Class 4 food establishments to employ a “certified food protection manager” and extends the requirement to Class 2 establishments. To be designated as such, the person must pass an exam that is part of a certification program evaluated and approved by an accrediting agency recognized by the Conference for Food Protection (see BACKGROUND). The bill also requires a certified food inspector to verify the food protection manager’s certification when inspecting the establishment.

Similar to current DPH regulations, the bill specifies that the certified food protection manager requirements do not prohibit the sale or distribution of food at certain bed-and-breakfast establishments and various noncommercial functions, such as bake sales or potluck suppers at educational or religious organizations.

### ***Appeal of Inspection Violations***

Similar to current DPH regulations, the bill allows a food establishment’s owner or operator to appeal to a local health director an order to (1) correct inspection violations a food inspector identified or (2) hold, destroy, or dispose of unsafe food within 48 hours after the order was issued.

The local health director may vacate, modify, or affirm the order. If the director affirms the order, he or she must order the corrective actions the food inspector specified.

The bill allows the owner or operator to appeal to DPH if he or she is aggrieved by the local health director's affirmed or modified order, including an order to suspend the food establishment's license or permit to operate. The owner or operator must appeal within three business days after receiving the order. During the appeal, the order remains in effect until the DPH commissioner orders otherwise.

### ***Investigations of Food Borne Illness or Outbreak***

Similar to current practice, the bill requires a local health director who has reasonable cause to suspect a possible food borne illness or outbreak to investigate and take action to control it. Actions may include (1) securing employee morbidity histories, (2) requiring medical or laboratory examinations of employees, (3) modifying a menu, or (4) any other restriction or action the director deems necessary.

Any person who violates the bill's provisions or provides false information during an investigation, refuses to cooperate or otherwise impede an investigation is guilty of a class C misdemeanor (punishable by a fine of up to \$500, imprisonment for up to three months, or both).

### ***Other Provisions***

Similar to current DPH regulations, the bill:

1. requires certified food inspectors to inspect food establishments as prescribed by the DPH commissioner;
2. requires food inspectors to obtain certification from DPH after meeting specified education and training requirements; and
3. exempts from the certified food manager requirements, soup kitchens staffed exclusively by volunteers, volunteers serving meals from a nonprofit organization, and people serving meals prepared under a certified food protection manager's supervision at federally-funded elderly congregate meal sites.

The FDA Food Code, similar to existing DPH regulations, addresses topics such as (1) sanitation of places food is stored, prepared, or served; (2) requirements for equipment and utensils; (3) use of chemicals; (4) and personnel management and training.

### ***Repealed Laws***

The bill makes conforming changes by repealing statutory provisions on (1) displaying signs in food establishments on the signs of choking, (2) allowing food establishments to use the sous vide cooking technique, and (3) allowing restaurants and catering establishments to acidify sushi rice as an alternative to temperature control.

## **BACKGROUND**

### ***FDA Food Code***

The FDA Food Code regulates entities that sell, manufacture, or provide food as part of their services. It establishes standards for safe food storage, handling, and preparation; inspection of food establishments, retail food operations, and institutions (e.g., child care centers and nursing homes); and training and education requirements for regulators and food establishments. The code is updated every four years (2013 is the latest edition).

### ***FDA Food Code Violations***

Under the FDA Food Code, inspection violations are generally categorized as “priority,” “priority foundation,” or “core” items. Priority violations have a direct connection to preventing, eliminating, or reducing foodborne illness or injury. Priority foundation items require specific actions, equipment, or procedures by an establishment’s management to control risk factors such as personnel training, documentation, and labeling. Core items are typically related to general sanitation and operating procedures, equipment design, and general maintenance, among other things. Both priority and priority foundation violations must generally be corrected at the time of inspection.

**Conference of Food Protection**

The Conference of Food Protection is a nonprofit organization that provides a formal process for food industry, regulatory, academic, consumer, and professional organizations to make recommendations on federal food safety laws and regulations. Its executive board includes representatives of (1) state and local food regulatory agencies from each of the FDA regions; (2) the U.S. Department of Agriculture, the Centers for Disease Control, and FDA; (3) the food industry, (4) academic institutions, and (5) consumers.

**COMMITTEE ACTION**

Public Health Committee

Joint Favorable Substitute

Yea 26 Nay 0 (03/22/2017)